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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 MICHAEL BRUCE BYNOE,

Case No. 3:17-cv-00624-MMD-VPC

10 Plaintiff,

ORDER

11 v.

12 STATE OF NEVADA, et al.,

13 Defendants.

14 Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections
15 ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has
16 filed an application to proceed *in forma pauperis*, motions for appointment of counsel, an
17 ex parte motion to mail his complaint instead of e-filing it¹, a motion for leave to file a first
18 amended complaint with a document that appears to be an addendum to Count III of the
19 original complaint, a motion for leave to file a second amended complaint with a document
20 that appears to be another addendum to Count III of the original complaint, and a
21 document that is entitled "Third Amended Complaint" but also appears to be an addendum
22 to the original complaint. (ECF No. 1, 1-1, 1-2, 1-3, 3, 3-1, 4, 4-1, 5, 6). The matter of
23 the filing fee shall be temporarily deferred.

24 I. **Leave to Amend**

25 It appears to the Court that Plaintiff seeks to amend Count III of his original
26 complaint. The documents Plaintiff has filed with his motion for leave to file a first amended

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¹ The ex parte motion to mail the complaint (ECF No. 1-2) is granted.

1 complaint (ECF No. 3-1) and his motion for leave to file a second amended complaint
2 (ECF No. 4-1) are not complete complaints and appear to be supplemental allegations.
3 Similarly, the document that Plaintiff has entitled "Third Amended Complaint" is not a
4 complete complaint (ECF No. 6), but instead contains supplemental allegations. The
5 Court will not piecemeal documents together to determine whether Plaintiff states a
6 colorable claim in his complaint. The Court therefore declines to screen Plaintiff's
7 complaint at this time and grants Plaintiff leave to file a complete First Amended
8 Complaint.

9 The Court notes that, if Plaintiff chooses to file a complete amended complaint,
10 Plaintiff shall file that amended complaint within thirty (30) days from the date of entry of
11 this order. If Plaintiff chooses not to file a complete amended complaint, the Court will
12 screen Plaintiff's original complaint (ECF No. 1-1) only.

13 If Plaintiff chooses to file a complete amended complaint, he is advised that an
14 amended complaint supersedes (replaces) the original complaint and, thus, the amended
15 complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner &*
16 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was
17 named in the original complaint is irrelevant; an amended pleading supersedes the
18 original"). Plaintiff's amended complaint must contain all claims, defendants, and specific
19 factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must
20 file the amended complaint on this Court's approved prisoner civil rights form and it must
21 be entitled "First Amended Complaint."

22 Plaintiff's motion for leave to file a first amended complaint (ECF No. 3) and motion
23 for leave to file a second amended complaint (ECF No. 4) are denied and the Court will
24 not file the documents submitted with those motions. In addition, Plaintiff's "Third
25 Amended Complaint" (ECF No. 6) shall be struck from the docket because all claims,
26 defendants, and specific factual allegations that Plaintiff wishes to pursue in this litigation
27 must be contained within either the original complaint or within the First Amended
28 Complaint, should Plaintiff choose to file a complete amended complaint.

1 **II. Motions for Appointment of Counsel**

2 Plaintiff has filed multiple motions for appointment of counsel. (ECF No. 1-3, 5). A
3 litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil
4 rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28
5 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable
6 to afford counsel.” However, the court will appoint counsel for indigent civil litigants only
7 in “exceptional circumstances.” *Palmer v. Valdez* , 560 F.3d 965, 970 (9th Cir. 2009) (§
8 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must
9 consider ‘the likelihood of success on the merits as well as the ability of the petitioner to
10 articulate his claims *pro se* in light of the complexity of the legal issues
11 involved.” *Id.* “Neither of these considerations is dispositive and instead must be viewed
12 together.” *Id.* In the instant case, the Court cannot assess the complexity of the case or
13 the likelihood of success on the merits until it receives an amended complaint or is notified
14 that Plaintiff intends to proceed on the original complaint. The Court therefore denies the
15 motions for appointment of counsel at this time, without prejudice.

16 **III. Conclusion**

17 It is therefore ordered that a decision on the application to proceed *in forma*
18 *pauperis* (ECF No. 1) is deferred.

19 It is further ordered that Plaintiff’s ex parte motion to mail his complaint (ECF No.
20 1-2) is granted.

21 It is further ordered that Plaintiff’s motion for leave to file a first amended complaint
22 (ECF No. 3) and motion for leave to file a second amended complaint (ECF No. 4) are
23 denied.

24 It is further ordered that the “Third Amended Complaint” (ECF No. 6) shall be struck
25 from the docket.

26 It is further ordered that Plaintiff’s motions for appointment of counsel (ECF No. 1-
27 3, 5) are denied at this time, without prejudice.

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It is further ordered that, if Plaintiff chooses to file an amended complaint, as outlined in this order, Plaintiff shall file the complete amended complaint within thirty (30) days from the date of entry of this order.

It is further ordered that the Clerk of the Court shall send to Plaintiff the approved form for filing a § 1983 complaint, instructions for the same, and a copy of his original complaint (ECF No. 1-1) and copies of ECF No. 3-1, ECF No. 4-1, and ECF No. 6. If Plaintiff chooses to file an amended complaint, he must use the approved form and he shall write the words "First Amended" above the words "Civil Rights Complaint" in the caption.

It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court will screen the amended complaint in a separate screening order.

It is further ordered that, if Plaintiff chooses not to file an amended complaint within thirty (30) days, the Court will screen Plaintiff's original complaint (ECF No. 1-1) only.

DATED THIS 12th day of July, 2018

VALERIE P. COOKE
UNITED STATES MAGISTRATE JUDGE